

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Implementation of Section 703 )  
Of the Telecommunications Act of 1996 ) CS Docket No. 96-166  
Amendments and Additions to the )  
Commission's Rules Governing )  
Pole Attachments )

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To: The Commission

JOINT COMMENTS OF  
THE EDISON ELECTRIC INSTITUTE AND UTC  
ON  
DELMARVA'S PETITION FOR CLARIFICATION/RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, the Edison Electric Institute (EEI) and UTC, The Telecommunications Association (UTC),<sup>1</sup> respectfully submit the following comments on Delmarva Power & Light Company's (Delmarva) "Petition for Clarification and Reconsideration" filed on the *Order*, FCC 96-327, released August 6, 1996, in the above-captioned proceeding to implement the "self-effectuating" pole attachment provisions of the Telecommunications Act of 1996.<sup>2</sup>

<sup>1</sup> UTC, The Telecommunications Association, was formerly known as the Utilities Telecommunications Council.

<sup>2</sup> On October 4, 1996, Public Notice of these petitions was provided in the Federal Register, 61 Fed. Reg. 51941.

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As the principal representatives of the utilities directly impacted by the Commission's interpretation and implementation of the Pole Attachment Act , 47 U.S.C. Section 224, as amended by Section 703 of the Telecommunications Act of 1996, both EEI and UTC have a direct interest in this proceeding. In fact, EEI and UTC also filed a "petition for clarification" regarding one aspect of the FCC's *Order*. EEI and UTC are therefore pleased to offer the following supporting comments on Delmarva's petition.

**I. Definition of the Term "Utility"**

The *Order* incorporates into the FCC's Rules a number of provisions contained in Section 703 of the Telecommunications Act of 1996 that add to or amend portions of Section 224 of the Communications Act of 1934 on the regulation of pole attachments. Specifically, the *Order* deals with the implementation of revised Sections 224(a)(1), (a)(4), (c)(1) and (c)(2)(B), and new Sections 224(a)(5), (d)(3), (g) and (i). The FCC deemed these provisions to be self-effectuating and therefore simply conformed its rules to meet the new statutory requirements.

Section 703 of the 1996 Act revises the definition of "utility" in section 224(a) read as follows:

*The term "utility" means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.*

Delmarva notes that the FCC has interpreted the Act as requiring a utility to provide access to telecommunications providers and cable companies to all of a utility's poles, ducts, conduits and rights-of-way, if any portion of the utility's system is used in whole or in part for wire communications. Recognizing that such an interpretation could include access to undeveloped utility right-of-way, Delmarva seeks clarification that utilities are not required to create infrastructure on unimproved rights-of-way to accommodate cable and telecommunications providers.

EEI and UTC agree. The Act provides for non-discriminatory access to utility rights-of-way but does not impose any obligation on the utility to improve rights-of-way for the use of third-parties.<sup>3</sup> Simply put, telephone and cable companies obtain access to utility rights-of-way as they find it. Any other interpretation would impose an unreasonable burden and cost on utilities, their customers and shareholders.<sup>4</sup>

## **II. Rearrangement/Modification Costs**

Delmarva also seeks clarification on the application of that new section 224(i).

This new section codified by the FCC as rule 1.1416(b) states that:

*An entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the*

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<sup>3</sup> This should be distinguished from the obligations of 224(h) which applies in instances where a third-party already has an existing attachment and the utility itself is making otherwise inaccessible facilities accessible for its own purposes.

<sup>4</sup> While not raised by Delmarva, another ambiguity in this definition is the issue of what constitutes an "other public utility." Presumably this will be determined on the basis of state and local statutes defining utilities.

*owner of such pole, duct, conduit, or right-of-way).*

EEI and UTC agree with Delmarva that the FCC should confirm that this provision does not alter accepted industry practices regarding the allocation of costs for pole replacement/rearrangement necessitated for reasons other than a new attachment. New Section 224(i) is aimed at ensuring that entities with existing attachments are not required to bear the costs of new attachments by other cable and telephone companies. As noted by Delmarva, the provision does not apply to instances where the pole replacement is necessitated by actions unrelated to new attachments, such as storm damage, accident or deterioration. In addition, the FCC should clarify that the provision does not apply when modifications to the facilities are required by third-parties, such as highway expansions that necessitate pole relocations. In such cases, each entity should bear its own costs for rearrangement/modification of poles.

**WHEREFORE, THE PREMISES CONSIDERED**, EEI and UTC respectfully request the FCC to take actions consistent with these comments on Delmarva's petition for clarification.

Respectfully submitted,

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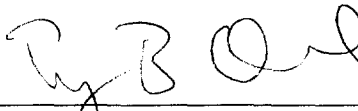
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October 21, 1996

## **CERTIFICATE OF SERVICE**

I, Ryan Oremland, hereby certify that I have caused to be sent by first class mail, postage prepaid, this 21st day of October, 1996, a copy of the foregoing "Joint Comments" to the following:

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